

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 04-2340/3038

GEOFFREY WILLARD ATWELL,

Appellant

v.

THOMAS LAVAN; EDWARD G. RENDELL; MARK S. SCHWEIKER; JEFFREY A. BEARD; THOMAS L. JAMES; SHARON M. BURKS; SARAH HART; RANDY SEARS; DONALD KELCHNER; MICHAEL J. KAZOR; CHARLES MARSELLA; KRISTA J. GRIFFITH; REX P. HILDEBRAND; DAVID L. ROBERTS; LEE T. BERNARD; JOHN S. SHAFFER; MARY BETH MARSCHIK; MICHAEL FARNAN; JOHN THOMAS; MIKE FISHER; MARK H. BERGSTROM; THOMAS W. CORBETT, JR.; ROBERT A. GREEVY; JAMES O. THOMAS, JR.; CHUCK ROBERTS; JAMES J. MCGRADY; ROBERT FANECK; GEORGINE LEACHEY; C. ZALEDONIS; KENNETH BURNETT; CHRIS PUTNAM; RICHARD KELLER; W. COLE; THOMAS J. WASILEWSKI; RICHARD HOLMES; W.C. WEST; DANIEL TUCKER; D.I. SMITH; DAVID MORRIS; STANLEY POHLIDAL; DONALD R. JONES; THEODORE HIGGINS; STANLEY BOHINSKI; R. STANISH; SCOTT THOMAS; HARRISON; PATRICIA GINOCCHETTI; KELLEY GALLAGHER; J. DOKNOVITCH; PATRICIA BUZZARD; LARRY J. LONG; JOHN LABROSKY; ERIC MYERS; SHERI GAUGHAN; TOM DOUGHERTY; MYRA LEONARD; BENJAMIN A. MARTINEZ; WILLIAM F. WARD; ALLEN CASTOR; BARBARA K. DESCHER; RICHARD A. KIPP; NICHOLAS A. MULLER; MICHAEL M. WEBSTER; GARY R. LUCHT; SEAN R. RYAN; MCCRONE; H. SCOTT ROY; MAHLON KING; KATHLEEN ZWIERZYNA; JUDITH B. SELVEY; ROBERT N. CAMPOLONGO; TARA L. PATTERSON; TIMOTHY P. WILE; JAMES GARDNER COLLINS; JOSEPH T. DOYLE; DORRIS A. SMITH; DAN R. PELLEGRINI; JAMES R. KELLEY; ROCHELLE S. FRIEDMAN; BONNIE R. LEADBETTER; ALEXANDER F. BARBIERI; JOHN JEDDIC; THOMAS G. GAVIN; JENNIE STEINNAM; DAVID B. MILLER; MCCLOSKEY; DAVID FRIEDMAN

On Appeal From the United States District Court
For the Middle District of Pennsylvania

(M.D. Pa. Civ. No. 03-cv-01728)
District Judge: Honorable Sylvia H. Rambo

Submitted Under Third Circuit LAR 34.1(a)
JUNE 22, 2005

Before: NYGAARD VAN ANTWERPEN AND GREENBERG, CIRCUIT JUDGES

(Filed June 23, 2005)

OPINION

PER CURIAM

Geoffrey Willard Atwell, proceeding pro se, appeals an order of the United States District Court for the Middle District of Pennsylvania dismissing his civil rights complaint. For the reasons that follow, we will vacate the District Court's order and remand for further proceedings.

While in prison, Atwell filed a complaint under 42 U.S.C. § 1983 against 86 defendants alleging that he was being held in custody beyond the expiration of his sentence, and that he was denied access to the courts and necessary medical care. Concluding that the complaint did not contain a short and plain statement of his claims as required by Federal Rule of Civil Procedure 8, and that his claims do not arise out of the same transaction or occurrence as required by Rule 20, the Magistrate Judge ordered Atwell to file an amended complaint, and notified him that if he failed to do so, he would

recommend that the District Court dismiss his action.

Atwell filed an amended complaint naming 54 defendants, and raising the same claims set forth in his initial complaint. The Magistrate Judge concluded that the amended complaint violated Rule 20, and recommended its dismissal on this basis. The District Court adopted the Magistrate Judge's report and recommendation and dismissed the complaint. The District Court denied Atwell's subsequent motions for reconsideration. Atwell was released from prison on May 22, 2004.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our standard of review is plenary. See Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999) (reviewing dismissal of complaint under 28 U.S.C. § 1915(e)(2)(B)).

The District Court correctly recognized that Federal Rule of Civil Procedure 20 allows a plaintiff to join defendants in one action if he asserts a right to relief arising out of the same transaction or occurrence. Fed. R. Civ. P. 20. However, Rule 21 provides that misjoinder of parties is not grounds for dismissal of an action. Fed. R. Civ. P. 21; Sabolsky v. Budzanoski, 457 F.2d 1245, 1249 (3d Cir. 1972). Although courts may drop or add parties under Rule 21, they cannot dismiss actions where there has been a misjoinder of parties. Letherer v. Alger Group, L.L.C., 328 F.3d 262, 267 (6th Cir. 2003). Thus, the District Court erred in dismissing Atwell's complaint on this basis.

Accordingly, we will vacate the District Court's order and remand this case for

further proceedings.¹

¹Atwell also appeals the denial of his motion for reconsideration of the order dismissing his complaint, and the denial of his initial in forma pauperis application. Based upon our disposition of Atwell's appeal of the order dismissing his complaint, it is unnecessary to address the denial of the related motion for reconsideration. Regarding his appeal related to the denial of in forma pauperis status, we conclude that we have jurisdiction over this appeal but Atwell has not shown that the District Court erred (the District Court later granted Atwell's application to proceed in forma pauperis on appeal). Finally, to the extent Atwell appeals the denial of appointment of counsel, the District Court did not abuse its discretion in denying his counsel motion.

